

SECOND REGULAR SESSION

HOUSE BILL NO. 1789

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HAAHR.

5865H.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 436, RSMo, by adding thereto nine new sections relating to nonrecourse consumer legal lending, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 436, RSMo, is amended by adding thereto nine new sections, to be known as sections 436.600, 436.605, 436.610, 436.615, 436.620, 436.625, 436.630, 436.635, and 436.640, to read as follows:

436.600. Sections 436.600 to 436.640 shall be known as the "Missouri Nonrecourse Consumer Legal Lending Act".

436.605. As used in sections 436.600 to 436.640, the following terms shall mean:

(1) "Advertise", the attempt by publication, dissemination, solicitation, circulation, or any other means to induce, directly or indirectly, any person to enter into a nonrecourse consumer legal lending transaction or contract with a consumer legal lending company;

(2) "Consumer", a person residing or domiciled in Missouri or who elects to enter into a transaction under sections 436.600 to 436.640, whether it be in person, over the internet, by facsimile, or by any other electronic means, and who has a pending legal claim and is represented by an attorney at the time he or she receives the nonrecourse consumer legal lending;

(3) "Consumer legal lending company", a person or entity that enters into a nonrecourse consumer legal lending transaction with a consumer;

(4) "Consumer legal lending contract" or "contract", a written agreement between a consumer and a consumer legal lending company that provides a consumer with nonrecourse civil legal lending. This shall not include business lines of credit;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (5) "Department", the Missouri department of insurance, financial institutions and
16 professional registration;

17 (6) "Director", the director of the Missouri department of insurance, financial
18 institutions and professional registration;

19 (7) "Fees", the amount of money to be paid to the nonrecourse consumer legal
20 lending company by or on behalf of the consumer, in addition to the principal amount of
21 all proceeds provided to a consumer pursuant to sections 436.600 to 436.640. "Fees"
22 include all administrative, origination, underwriting, or other charges no matter how
23 denominated;

24 (8) "Legal claim", a civil claim or action;

25 (9) "Lending date", the date on which the loan amount is sent to the consumer by
26 the consumer legal lending company;

27 (10) "Nonrecourse consumer legal lending", the provision of funds directly to a
28 consumer by a consumer legal lending company in a nonrecourse consumer legal lending
29 transaction;

30 (11) "Nonrecourse consumer legal lending transaction" or "transaction", a
31 transaction in which a consumer legal lending company purchases and a consumer assigns,
32 conveys, or otherwise confers to the consumer legal lending company the right to receive
33 the potential proceeds, or a part thereof, of the consumer's legal claim to the consumer
34 legal lending company out of the proceeds of any realized settlement, judgment, award, or
35 verdict the consumer may receive in a legal claim;

36 (12) "Resolution date", the date the loan amount to the consumer plus the agreed
37 upon fees from the legal claim are delivered to the consumer legal lending company.

436.610. 1. Each consumer legal lending contract shall include:

2 (1) Disclosures specified in this subsection, which shall constitute the material terms
3 of the contract. All disclosures must be typed in at least twelve-point bold-faced font and
4 be placed clearly and conspicuously within the contract as follows:

5 (a) On the front page, language specifying:

6 a. The total amount of funds to be paid to the consumer by the consumer legal
7 lending company;

8 b. An itemization of one-time fees;

9 c. An itemization of nonrefundable fees;

10 d. The total amount to be assigned by the consumer to the consumer legal lending
11 company including all fees;

12 e. The total amount of the portion of proceeds the consumer legal lending company
13 has a contingent right to receive from the consumer;

14 (b) Within the body of the contract, the following language in capitalized letters
15 and twelve-point bold-type font: "IF THERE IS NO RECOVERY OF ANY DAMAGES
16 FROM YOUR LEGAL CLAIM OR IF THERE IS NOT ENOUGH MONEY TO PAY
17 THE CONSUMER LEGAL LENDING COMPANY BACK IN FULL, YOU WILL NOT
18 OWE THE CONSUMER LEGAL LENDING COMPANY ANYTHING IN EXCESS OF
19 YOUR RECOVERY UNLESS YOU HAVE VIOLATED THIS CONTRACT.";

(c) Immediately above the space that requires the consumer's signature, the following language in capitalized letters and twelve-point bold-faced font: "DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT COMPLETELY OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COMPLETELY FILLED-IN COPY OF THIS CONTRACT. BEFORE YOU SIGN THIS CONTRACT, YOU MAY OBTAIN THE ADVICE OF AN ATTORNEY.";

26 (2) A statement in type that is boldfaced, capitalized, underlined, and otherwise set
27 out from surrounding written materials so as to be conspicuous, a notice as follows:

28 "CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS
29 CONTRACT WITHOUT PENALTY OR FURTHER OBLIGATION WITHIN FIVE
30 BUSINESS DAYS FROM THE DATE YOU RECEIVE FUNDING FROM (INSERT
31 NAME OF CONSUMER LEGAL LENDING COMPANY). SEE THE NOTICE OF
32 CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.";

33 (3) A notice of cancellation. The notice must be in boldfaced type and in the
34 following form:

35 "NOTICE OF CANCELLATION

36 **You may cancel this contract, without penalty or obligation, within five days after**
37 **the date the contract is signed.**

38 To cancel this contract, send by mail, or deliver in person, a signed and dated copy
39 of this cancellation notice or other written notice to: (name of consumer
40 legal lending company) (address)(place of business) not later than
41 midnight on (date), unless there is evidence that the cancellation notice was
42 postmarked by (date).

43 **I hereby cancel this transaction.**

44 (date)

45 (consumer's signature)";

46 **(4) The address of the consumer legal lending company's principal place of business**
47 **and the name and address of its agent in the state authorized to receive service of process;**

48 **(5) An acknowledgment by the consumer that such consumer has reviewed the**
49 **contract in its entirety;**

50 **(6) A space for containing the initials of the consumer on each page.**

51 **2. The consumer may cancel the consumer legal lending contract without penalty**
52 **or further obligation if, within five business days after the date the contract is signed, the**
53 **consumer either:**

54 **(1) Returns to the consumer legal lending company the full amount of the disbursed**
55 **funds by delivering the consumer legal lending company's uncashed check to the consumer**
56 **legal lending company's office in person; or**

57 **(2) Mails, by insured, certified, or registered United States mail, postmarked within**
58 **five business days after the lending date of the transaction, to the address specified in the**
59 **contract the notice of cancellation and includes the full amount of disbursed funds in the**
60 **form of the consumer legal lending company's uncashed check or a certified check or**
61 **money order.**

62 **3. The consumer legal lending company shall provide to the consumer a copy of the**
63 **completed contract and all other documents the consumer legal lending company requires**
64 **the consumer to sign at the time they are signed.**

65 **4. All nonrecourse consumer legal lending transactions shall accurately reflect the**
66 **actual terms, conditions, fees, and repayment schedule.**

67 **5. Notwithstanding any provision of a consumer legal lending contract to the**
68 **contrary, any party seeking relief from a consumer legal lending contract may bring suit**
69 **in a court of competent jurisdiction.**

436.615. 1. The contingent right to receive an amount of the potential proceeds of
2 **a legal claim is assignable by a consumer and that assignment is valid only for the purposes**
3 **of entering into a nonrecourse consumer legal lending transaction with a consumer legal**
4 **lending company.**

5 **2. Any attorney's lien, medicare lien, and valid health care provider lien arising**
6 **from and attached to the consumer's legal claim shall take priority over any lien of the**
7 **consumer legal lending company.**

8 **3. After the resolution date and once proceeds from a legal action are available to**
9 **distribute, if insufficient proceeds remain to pay the consumer legal lending company, no**
10 **consumer legal lending company shall report to any credit reporting agency.**

436.620. Regarding total fees assigned by the consumer to the consumer legal
2 **lending company:**

3 **(1) A consumer legal lending company may charge an origination fee or delivery**
4 **fee for processing a nonrecourse consumer legal lending application;**

5 (2) A consumer legal lending company may not assess additional fees beyond any
6 period exceeding one thousand ninety-five calendar days from the lending date with the
7 consumer;

8 (3) Fees assessed by the consumer legal lending company may compound
9 semiannually but shall not compound based on any lesser time period;

10 (4) In no case shall any fees, interest, or other charges exceed an annual percentage
11 rate of ten percent;

12 (5) In calculating any fee to the consumer, a consumer legal lending company shall
13 include all charges payable directly or indirectly by the consumer and shall compute the
14 rate based on the loan amount actually received by a consumer from the consumer legal
15 lending company.

 436.625. 1. Licensed attorneys in this state are prohibited from having a direct
2 financial interest in a consumer legal lending company that engages in nonrecourse
3 consumer legal lending transactions with their own clients and from receiving referral fees
4 or other forms of direct compensation from a consumer legal lending company or agent
5 thereof.

6 2. A consumer legal lending company or agent thereof shall not:

7 (1) Enter into a nonrecourse consumer legal lending transaction with a consumer
8 unless the consumer acknowledges that the funds extended to the consumer are to be used
9 for that consumer's personal living expenses and not to further a legal claim;

10 (2) Control, directly or indirectly, or participate in the conduct of, the legal claim
11 that is related to a nonrecourse consumer legal lending transaction;

12 (3) Pay or offer to pay commissions, referral fees, rebates, or other forms of
13 consideration for referring a consumer to a consumer legal lending company;

14 (4) Advertise false or misleading information regarding their products or services;

15 (5) Advertise information regarding nonrecourse consumer legal lending without
16 a conspicuous itemized list of nonrefundable fees commonly charged for entering into a
17 nonrecourse consumer legal lending transaction or contract with the company;

18 (6) Refer, in furtherance of an initial nonrecourse consumer legal lending
19 transaction, a client or potential client to a specific attorney, law firm, or medical
20 professional; provided, however, if a client needs legal representation, the consumer legal
21 lending company may refer the client to a state or local bar association referral service;

22 (7) Fail to provide all complete agreements to the consumer;

23 (8) Require arbitration or cause the consumer to waive remedies at law, except
24 remedies available through class action;

25 (9) Knowingly provide consumer legal lending to a consumer who has previously
26 assigned or sold a portion of the consumer's right to proceeds from their legal claim
27 without first making payment to or purchasing a prior consumer legal lending company's
28 entire funding amount and contract charges;

29 (10) Receive any right to, nor make any decisions with respect to, the conduct of the
30 underlying legal claim or any settlement resolution thereof;

31 (11) Knowingly pay or offer to pay for a consumer's legal lending transaction,
32 attorney fees, or litigation costs either during or after the resolution of the legal claim,
33 directly or indirectly.

 436.630. 1. Unless a consumer legal lending company has first registered pursuant
2 to subsection 2 of this section, a consumer legal lending company shall not engage in the
3 business of nonrecourse consumer legal lending.

4 2. A consumer legal lending company shall submit an application of registration
5 annually, beginning June 1, 2015, accompanied by an application fee of two hundred
6 dollars to the department. The fee shall be credited to the division of finance fund
7 established in section 361.170. On June 1, 2016, the director shall ascertain the total
8 expenses for administering sections 436.600 to 436.640 and shall set the application fee at
9 a rate to cover but not yield revenue greater than projected expenses for administering
10 sections 436.600 to 436.640 for the ensuing year. An application filed under this subsection
11 shall be a public record under chapter 610 and shall contain information that allows the
12 department to make an evaluation of the character, fitness, and financial responsibility of
13 the company such that they may determine that the company will be operated honestly or
14 fairly within the purposes of sections 436.600 to 436.640. For purposes of determining a
15 consumer legal lending company's character fitness and financial responsibility, the
16 department may request that the company submit:

17 (1) A copy of the company's articles of incorporation, articles of organization,
18 certificate of limited partnership, or other organizational documents;

19 (2) Proof of a surety bond or irrevocable letter of credit issued and confirmed by
20 a financial institution authorized by law to transact business in the state of Missouri that
21 is equal to double the amount of the largest amount lent in the past calendar year, or fifty
22 thousand dollars, whichever is greater;

23 (3) The number of nonrecourse consumer legal lending transactions conducted in
24 the state of Missouri in the previous calendar year;

25 (4) The financial amount provided to consumers in the state of Missouri through
26 nonrecourse consumer legal lending transactions;

27 (5) The financial amount recovered from consumers in the state of Missouri
28 through nonrecourse consumer legal lending transactions;

29 (6) The number of outstanding nonrecourse consumer legal lending transactions
30 in the state of Missouri;

31 (7) The financial amount and number of cases in which the realization of the
32 consumer legal lending company was less than the contracted amount.

33 3. The department shall:

34 (1) By rule and regulation, establish procedures for registration and registration
35 renewals;

36 (2) Suspend, revoke, or refuse to renew a certificate of registration for conduct
37 violating sections 436.600 to 436.640.

38 4. The department shall, beginning January 1, 2017, prepare and submit an annual
39 report to the general assembly on the status of nonrecourse consumer legal lending
40 transactions in the state. The report shall include aggregate information reported by
41 consumer legal lending companies to the department, the cost of administering sections
42 436.600 to 436.640, and the current application fee charged to consumers.

 436.635. The director shall promulgate reasonable regulations for the enforcement
2 of section 436.630. Any rule or portion of a rule, as that term is defined in section 536.010
3 that is created under the authority delegated in section 436.630 shall become effective only
4 if it complies with and is subject to all of the provisions of chapter 536, and, if applicable,
5 section 536.028. This section and chapter 536 are nonseverable and if any of the powers
6 vested with the general assembly pursuant to chapter 536, to review, to delay the effective
7 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the
8 grant of rulemaking authority and any rule proposed or adopted after August 28, 2014,
9 shall be invalid and void.

 436.640. Any person or nonrecourse consumer legal lending company, or agent
2 thereof, who willfully and knowingly violates sections 436.600 to 436.640 shall be guilty of
3 a class B misdemeanor for the first offense, a class A misdemeanor for the second offense,
4 and a class D felony for all subsequent offenses.

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